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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the	)	CC Docket No. 92-237
North American Numbering Plan	)	

COMMENTS OF THE NATIONAL TELEPHONE ASSOCIATION

The National Telephone Association ("NTCA") files these comments in response to the Second Further Notice of Proposed Rulemaking ("FNPRM") in this docket, (FCC97-386). The FNPRM requests comments on a proposal to require LECs to convert facilities in their end offices to provide equal access. The LECs that will be affected by the proposal are small independent companies.

NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural and small-town America. Some of the LECS that will be affected by the above proposals are NTCA members.

DISCUSSION

The Commission proposes a three year period for LEC implementation of equal access and four-digit Carrier Identification Codes ("CICs") in end offices equipped with SPC. These LECs would be required to upgrade their offices to provide equal access and to accept four-digit Carrier Identification Codes (CICs) within three years regardless of whether they receive a bona

fide request for equal access. This rule would apply to LECs who have received a waiver of the equal access requirement. LECs whose end offices are equipped with non-SPC switches would be required to provide equal access and convert to four-digit CICs when they next replace switching facilities. The costs to LECs covered by this requirement are expected to be substantial. Under existing rules, all LECs that provide equal access must have completed switch changes to recognize four-digit CICs by January 1, 1998.[1]

The Commission's ultimate objective is to advance the pro-competitive objectives of the Communications Act, as amended.[2] Its short term purpose in proposing the rule changes is to facilitate implementation of the conversion to four digit CICs and seven-digit CACS. The proposal would modify the equal access implementation schedule for non-GTE independents set by the 1985 Independent Telephone Company Equal Access Report and Order. The Commission notes that more than twelve years have passed since the adoption of that order and concludes that equal access should now occur as soon as practicable, regardless of whether a request has been made and regardless of the type of switch with which an end office is equipped.

NTCA expects that most rural LECs that are not offering equal access will have made the investment needed by the end of the three year period proposed. However, for some, the rule will cause an increase in their upgrade schedule and/or more rapid phase out of existing equipment. These carriers should at least be treated as if they had received a bona fide request for equal access pursuant to 47 C.F.R. § 36.191, since the new rule will be the functional

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[1] *See,* Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking (Order) FCC 97-386), ¶ 4.

[2] *Id.*

equivalent of such a request. It is appropriate to make an allocation to Equal Access Investment and Expense where the investment is required for the primary benefit of interstate interexchange carriers.

Rural telephone companies have been in the forefront of modernization and are just as concerned as anyone else that their customers have multiple options, including dialing parity and the ability to choose their interstate interexchange carrier. However, the Commission should realize that its own recovery rules have created a situation in which the twelve year delay to equal access has sometimes been required by prudent business practices. Even though modernization and multiple choices for the subscriber is the standard, each company must consider whether there is reasonable demand for the service before it deploys facilities. In cases where there has been no request for equal access, there has obviously been no demand.

Assuming a requirement to deploy equal access facilities within three years and rules providing for adequate recovery, the Commission will still need to have a waiver procedure that permits relief from the absolute rule. It is conceivable that their will be rare cases where it would not be prudent to deploy equal access facilities either because there is no present or foreseeable demand or because the upgrade of switching facilities within the three year time frame would be uneconomic or impractical or would otherwise impose undue hardship on the company, its subscribers and the public. These cases are of the type for which the Commission has traditionally entertained waivers, recognizing that rules are not perfect and sometimes defeat rather than promote overall objectives. The Act's pro-competitive goals must always be balanced with its universal service goals. This requires that the Commission maintain procedures that permit relief from a general pro-competitive rule in those instances where the public interest

or the interest of consumers might be jeopardized unless the Commission permits an exception to the rule.

In its Initial Regulatory Flexibility Analysis, the Commission concludes that the proposals would impose minimum burdens on small entities but it fails to consider the effect on the only small entities that will be affected by the rule, incumbent LECs. FNPRM, Appendix B at ¶ 6. It accomplishes this result by concluding that incumbent LECs are "dominant" or "not independently owned and operated" and therefore not "small entities" under the Regulatory Flexibility Act.

Although the Commission recognizes that the "small businesses" that are telecommunications entities described in SIC code 4813 are "small business concerns" under the RFA, it doggedly relies on a prior and erroneous conclusion that all incumbent LECs, regardless of size, are "dominant in their field of operation," and consequently, not "small entities" under the RFA. This reliance on a stale finding that all incumbent LECs are dominant is not consistent with the RFA. The authority for the dominance finding that the Commission references, 15 U.S.C.§ 632(a)(1), requires that a finding be made by the Small Business Administrator under 15 U.S.C.§ 632(a)(2). No such finding has been made. In light of that, the Commission should apply the one determination the Administrator has made with respect to LECs. That determination defines non-radiotelephone companies such as the ones that will be affected by this rule change as "small business concerns" under the RFA.[3]

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[3] 5 U.S.C. § 601(3) states: "the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act [15 U.S.C. §632], unless an agency, after consultation with the Office of Advocacy of the small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal

The small incumbent LECs that will be affected by the proposed rule changes in the FNPRM are "small entities" and the Commission should consider alternatives and take steps to minimize burdens placed on them by its proposals. While NTCA is not opposed to the rule change, it suggests that waivers be made available as an alternative. It also suggests that cost recovery rules permit the LECs compelled to comply with this mandate to recover their costs under Section 36.191 of the Rules. These alternatives should be considered as part of the Commission's final RFA analysis.

Register." The SBA established standards and defined what businesses are "small business concerns" in 13 C.F.R. § 121.201. A non-radiotelephone company with fewer than 1,500 employees is a "small-entity" under SBA definitions. Entities in this category are "small business concerns."

CONCLUSION

For the above stated reasons, NTCA urges the Commission to ensure adequate rules of recovery and a waiver process to provide relief in those instances where compliance with the three year schedule would impose an undue hardship or otherwise not be in the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 92-237 was served on this 8th day of December 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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